



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**REPLY COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES ON
THE PROPOSED INTERIM OPINION ON REPORTING
AND TRACKING OF GREENHOUSE GAS EMISSIONS
IN THE ELECTRICITY SECTOR**

I. INTRODUCTION

Pursuant to Rules 14.3 and 14.6 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these reply comments on the "Interim Opinion on Reporting and Tracking of Greenhouse Gas Emissions in the Electricity Sector" (PD).

The establishment of an equitable and accurate default emissions factor methodology that satisfies all parties is clearly the most contentious part of developing the "Proposed Electricity Sector Greenhouse Gas Reporting (GHG) and Tracking Protocol" (Proposed Protocol). DRA believes that while there is likely not a perfect solution that will balance the competing interests in this proceeding, this Commission and California Energy Commission (Commissions) must adopt a methodology that maximizes accuracy and transparency while minimizing unintended consequences, such as contract shuffling and other gaming. A critical component for effective regulation of GHG emissions from the production of electricity is a regional GHG tracking system for all electricity generation that enables accurate source-to-sink GHG emissions tracking.

DRA considers any default emissions factors as at best an interim solution that will hopefully be supplanted by a regional GHG tracking system before the compliance date of January 1, 2012. The integrity of a prospective regional GHG emissions reduction program will depend on a regional tracking system.

II. DISCUSSION

A. The Commission should reserve judgment on default emissions factors until more accurate calculations are performed.

DRA shares the concerns raised by multiple parties¹ regarding the calculation methodology underlying the PD's proposed regional default emissions factors. Determining the "right" default emission factor is a difficult balancing act. A default factor that is too low will create a perverse incentive for high emitting resources to mask as unspecified resources. Likewise, a default emissions factor that is too high will overestimate the GHG emissions reported by the LSEs, which, under a cap-and-trade scheme, would unfairly punish the LSEs for contracting with unspecified resources. Given the uncertainty of whether the electricity sector will be subjected to a cap-and-trade scheme, DRA recommends that the Commission err on the high side when determining the default emissions factor.

GPI recommends that the joint Commissions adopt reporting requirements that do not predetermine "the actual regional emissions factors to be applied to imports of electricity from unspecified sources."² Likewise, PG&E also recommends deferring the adoption of default emissions until technical workshops are held.³ While DRA supports calculating default emissions based on "an averaging methodology [that] would subtract

¹ See comments of Northern California Power Association (NCPA), Sacramento Municipal Utility District (SMUD), National Resources Defense Council/Union of Concerned Scientists (NRDC/UCS), Pacific Gas & Electric (PG&E), and the Green Power Institute (GPI).

² Comments of the Green Power Institute on the Proposed Decision of Commissioner Peevey, August 24, 2007 (GPI Comments), at 4.

³ Opening Comments of Pacific Gas and Electric Company on Proposed Decision on Reporting and Tracking of Greenhouse Gas Emissions in the Electricity Sector, August 24, 2007 (PG&E Comments), at 7.

out the generation from owned resources and resources under specified contracts from the total generation mix,” it is still difficult to reasonably estimate the results of this calculation for a relative comparison to the proposed 1,075 lbs CO₂/MWh.⁴ Given the critical importance of accurate emission factors and the controversy surrounding the proposed methodology, DRA believes additional technical analysis would be prudent. A workshop discussion would enable parties to better understand the implications of various methodologies and vet their concerns.

A second objective of this workshop should be to explore the requirements of a regional GHG tracking system for electricity generating resources. The output of this discussion would serve as a useful input to the California Air Resources Board (ARB) as well as the Western Climate Initiative, which currently seeks to design a multi-sector cap-and-trade system by August 2008. DRA recommends that Joint Staff conduct a workshop at the earliest convenience prior to ARB’s adoption of the reporting protocols.

B. It is premature to conclude that the proposed use of default emissions factors for reporting purposes would result in regulatory takings or impairment of contracts.

The California Municipal Utilities Association (CMUA) argues that the proposed use of default emissions factors under Sections 3.3 and 3.8 of the Proposed Protocol “may violate substantive due process by depriving plant-owning retail sellers of property without due process of law.”⁵ According to CMUA, the proposed use of default emission factors for contracts with specified resources that are executed after January 1, 2008 would effectively restrict the ability of a power plant owner to achieve actual reductions of GHG emissions, leaving the power plant owner with only two options: selling its share of a high-emitting resource or laying-off the owner’s proportional share

⁴ Comments of The Division of Ratepayer Advocates on the Proposed Interim Opinion on Reporting and Tracking of Greenhouse Gas Emissions in the Electricity Sector, August 24, 2007 (DRA Comments), at 4.

⁵ Comments of CMUA, p. 7.

by actually changing the power plant's operation. CMUA argues that this might amount to a regulatory taking or impermissible impairment of an existing contract.⁶

The Proposed Reporting Protocol deals only with reporting emissions, not with the ultimate cap adopted or alternate compliance mechanisms available, so to posit a situation in which compliance with AB 32 would require a plant owner to sell or lay-off its share of a power plant order, or the economic impacts associated with any sale or lay-off, is highly speculative. In any case, the standard for establishing a regulatory taking is high,⁷ especially for regulated entities such as utilities.⁸ It is likewise premature to conclude the proposed Reporting Protocol's use of default emissions factors for reporting purposes would operate to impair existing contracts in violation of the Contracts Clause of the United States Constitution.

III. CONCLUSION

For the foregoing reasons, DRA recommends that the Commission adopt the PD with the changes proposed by DRA's Opening Comments.

Respectfully submitted,

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⁶ *Id.*

⁷ *Yee v. City of Escondido*, 503 U.S. 519 (1992).

⁸ *Duquesne Light Company v. Barasch*, 489 U.S. 299 (1989).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED INTERIM OPINION ON REPORTING AND TRACKING OF GREENHOUSE GAS EMISSIONS IN THE ELECTRICITY SECTOR in R.06-04-009** by using the following service:

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